

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WILLIAM LONDO,

Defendant.

3:05-CR-00085-LRH-WGC

ORDER

Before the court is defendant James Londo's Motion to Vacate under 28 U.S.C. § 2255 (#343). The United States of America has responded (#349) following the court's order directing a response, and Londo has replied (#352).

I. Facts and Procedural History

Londo was convicted by a jury on August 5, 2008, of conspiracy with intent to distribute methamphetamines. Londo had originally pleaded guilty, but he fought a two-year battle to withdraw his guilty plea in order to present evidence of sentencing entrapment at trial. He was unsuccessful: the court sentenced Londo to a twenty-year mandatory minimum, and the period of direct review terminated on October 4, 2010. On August 23, 2012, Londo moved to vacate, set aside, or correct his sentence under § 2255.

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1 II. Discussion

2 Londo bases his motion on an ineffective-assistance-of-counsel claim, in which he alleges
 3 that his trial counsel failed to inform him of a plea offer by the government in July 2008. He
 4 brought his motion more than one year after his judgment of conviction became final. *Clay v.*
 5 *United States*, 537 U.S. 522, 525 (2003). Accordingly, Londo’s motion would normally be time-
 6 barred under § 2255(f). However, Londo asks for relief from § 2255’s one-year statute of
 7 limitations by asserting that the right on which he relies—a right of the accused to have plea
 8 agreements communicated to him by his counsel, *Missouri v. Frye*, 132 S. Ct. 1399 (2012)—is
 9 “newly recognized” and was “made retroactive to cases on collateral review.” 28 U.S.C. §
 10 2255(f)(3).

11 Londo is incorrect. “[N]either *Cooper* nor *Frye* announced a new rule of constitutional
 12 law.” *Williams v. United States*, 705 F.3d 293, 294 (8th Cir. 2013) (citing *Buenrostro v. United*
 13 *States*, 697 F.3d 1137, 1140 (9th Cir. 2012)). Rather, *Frye* “merely applied the Sixth Amendment
 14 right to effective assistance of counsel according to the test articulated in *Strickland v. Washington*,
 15 466 U.S. 668, 686 (1984).” *Buenrostro*, 697 F.3d at 1140. Furthermore, the Supreme Court itself
 16 emphasized that it was merely applying *Strickland* in *Frye*, not breaking new ground. *Id.* See also
 17 *In re King*, 697 F.3d 1189 (5th Cir. 2012); *Hare v. United States*, 688 F.3d 878, 879-80 (7th Cir.
 18 2012); *In re Perez*, 682 F.3d 930, 932-34 (11th Cir. 2012). Since Londo has had an opportunity to
 19 respond, dismissal on the grounds of untimeliness is appropriate. *Day v. McDonogh*, 547 U.S. 198,
 20 210 (2006).

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1 IT IS THEREFORE ORDERED that Londo's Motion to Vacate under 28 U.S.C. § 2255
2 (#343) is DENIED.

3 IT IS SO ORDERED.

4 DATED this 22nd day of July, 2013.

A handwritten signature in blue ink, appearing to read "L. Hicks", is positioned above the printed name of the judge.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE